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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,505	04/05/2001	Scott Casavant	PD-200359	7900
7590	12/21/2004		EXAMINER	
Hughes Electronics Corporation Patent Docket Administration Bldg. 1, Mail Stop A109 P.O. Box 956 El Segundo, CA 90245-0956			DAVIS, CYNTHIA L	
			ART UNIT	PAPER NUMBER
			2665	
			DATE MAILED: 12/21/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/826,505	CASAVANT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cynthia L Davis	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 April 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-2, 4-5, 7-8, 10-11, 13-14, 16-17, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by McMullan.

Regarding claim 1, receiving a broadcast information stream at a first data rate at a headed is disclosed in column 2, lines 5-7. Inserting one or more packets from a local information stream into the broadcast information stream to form a combined information stream is disclosed in column 2, lines 7-14, and column 1, lines 7-12 (the system is a digital transmission system, which would involve information transmitted in packet form). Transmitting the combined information stream to the user device at a second data rate is disclosed in column 2, lines 12-14.

Regarding claim 4, combining a broadcast information stream at a first data rate and a local information stream to form a combined information stream at a second data rate is disclosed in column 2, lines 5-9. Receiving the combined information stream at the user device is disclosed in column 2, lines 12-14.

Regarding claim 7, receiving a broadcast information stream including one or more packets unusable to the user device and inserting one or more local information packets in place of the unusable packets to form a combined information stream is

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disclosed in column 1, lines 7-16 (the local information in the digital transmission system may be used to replace control information from the broadcast system that is unusable by the user device). Transmitting the combined information stream to the user device is disclosed in column 2, lines 12-14.

Regarding claim 10, a headend coupled to the user device is disclosed in figure 1a, element 102, and column 3, line 24. A local information source and broadcast information source coupled to the headend is disclosed in column 1, lines 7-12. Receiving a broadcast information stream from the broadcast information source at a first data rate is disclosed in column 2, lines 5-7. Inserting one or more packets from a local information stream from the local information source into the broadcast information stream to form a combined information stream is disclosed in column 1, lines 7-12. Transmitting the combined information stream to the user device at a second data rate is disclosed in column 2, lines 12-14.

Regarding claim 13, a broadcast information stream at a first data rate, a local information stream, combining the broadcast information stream and the local information stream at a second data rate, and receiving the combined information stream at the user device is disclosed in column 1, lines 7-12, and column 2, lines 5-14.

Regarding claim 16, a headend coupled to the user device, a local information source coupled to the headend, a broadcast information source coupled to the headend, receiving a broadcast information stream including one or more packets unneeded by the user device, inserting one or more local packets in place of the unneeded packets to form a combined information stream, and transmitting the

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combined information stream to the user device is disclosed in column 1, lines 7-16, and column 2, lines 5-14.

Regarding claims 2, 5, 8, 11, 14, and 17, the user device including a TV or set-top box is disclosed in figure 1b, elements 151 and 152.

Regarding claim 19, a broadcast source configured to transmit a broadcast information stream, wherein one or more packets associated with a local information stream are inserted into one or more unneeded packet locations in the broadcast information stream is disclosed in column 1, lines 7-16.

Regarding claim 20, a broadcast information source configured to transmit a broadcast information stream at a first data rate, wherein one or more packets associated with a local information stream are inserted into the broadcast information stream to form a combined information stream, the combined information stream transmitted at a second data rate different from the first data rate is disclosed in column 1, lines 7-16, column 7, lines 42-43 (the first data rate, 33.8 mbps) and column 7, line 60 (the second data rate, 5.64 mbps).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 6, 9, 12, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMullan.

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Regarding claims 3, 6, 9, 12, and 18, the first data rate being around 30Mbps is disclosed in column 7, lines 42-43 (33.8 mbps is around 30). The second data rate being less than 100kbps is missing from McMullan. However, there is no support in the specification of the instant application for criticality of this value. It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on the applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937), Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 417 (1943).

Regarding claim 15, the first data rate being around 20Mbps and the second data rate being around 25 Mbps is missing from McMullan. However, there is no support in the specification of the instant application for criticality of these numbers. It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on the applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937), Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 417 (1943).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia L Davis whose telephone number is (571) 272-3117. The examiner can normally be reached on 8:30 to 6, Monday to Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLD

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